

exceed \$500, and the contracting officer agrees to recognize the insurance costs.

(2) If appropriate, revise the clause at 252.228–7001, Ground and Flight Risk, as follows—

(i) Include a modified definition of “aircraft” if the contract covers other than conventional types of winged aircraft, i.e., helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.

(ii) Modify “in the open” to include “hush houses,” test hangars and comparable structures, and other designated areas.

(iii) Expressly define the “contractor’s premises” where the aircraft will be located during and for contract performance. These locations may include contract premises which are owned, leased, or premises where the contractor is a permittee or licensee or has a right to use, including Government airfields.

(iv) Revise paragraph (d)(iii) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—

(A) Limited to the vicinity of contractor premises; and

(B) Incidental to work performed under the contract.

(c)(1) Use the clause at 252.228–7002, Aircraft Flight Risk, in cost reimbursement contracts—

(i) For the development, production, modification, maintenance, repair, or overhaul of aircraft; or

(ii) Otherwise involving the furnishing of aircraft to the contractor by the Government.

(iii) With the definition of “aircraft” modified, if appropriate, to include helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft.

(2) Use the clause at 252.228–7002, Aircraft Flight Risk, appropriately modified, in fixed price contracts when—

(i) The clause at 252.228–7001, Ground and Flight Risk, is not used; and

(ii) Contract performance involves the flight of Government furnished aircraft.

(d) The clause at 252.228–7003, Capture and Detention, may be used when contractor employees are subject to capture and detention and may not be covered by the War Hazards Compensation Act (42 U.S.C. 1701 *et seq.*).

(e) The clause at 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, may be used in solicitations and contracts which involve the manufacture, modification, overhaul, or repair of these items.

(f) Use the clause at 252.228–7006, Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be performed in Spain, unless the contractor is a Spanish concern.

[56 FR 36404, July 31, 1991, as amended at 57 FR 42631, Sept. 15, 1992; 62 FR 34125, June 24, 1997; 63 FR 69006, Dec. 15, 1998]

PART 229—TAXES

Subpart 229.1—General

Sec.

229.101 Resolving tax problems.

229.170 Reporting of foreign taxation on U.S. assistance programs.

229.170–1 Definition.

229.170–2 Policy.

229.170–3 Reports.

229.170–4 Contract clause.

Subpart 229.4—Contract Clauses

229.402 Foreign contracts.

229.402–1 Foreign fixed-price contracts.

229.402–70 Additional clauses.

Subpart 229.70—Special Procedures for Overseas Contracts

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36405, July 31, 1991, unless otherwise noted.

Subpart 229.1—General

229.101 Resolving tax problems.

(a) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force,

Department of Defense

229.402-70

and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General.

(c) For guidance on directing a contractor to litigate the applicability of a particular tax, see PGI 229.101(c).

(d) For information on tax relief agreements between the United States and European foreign governments, see PGI 229.101(d).

[70 FR 8538, Feb. 22, 2005]

229.170 Reporting of foreign taxation on U.S. assistance programs.

229.170-1 Definition.

Commodities, as used in this section, means any materials, articles, supplies, goods, or equipment.

[70 FR 57192, Sept. 30, 2005]

229.170-2 Policy.

(a) By law, bilateral agreements with foreign governments must include a provision that commodities acquired under contracts funded by U.S. assistance programs shall be exempt from taxation by the foreign government. If taxes or customs duties nevertheless are imposed, the foreign government must reimburse the amount of such taxes to the U.S. Government (Section 579 of Division E of the Consolidated Appropriations Act, 2003 (Pub. L. 108-7), as amended by Section 506 of Division D of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and similar sections in subsequent acts).

(b) This foreign tax exemption—

(1) Applies to a contract or sub-contract for commodities when—

(i) The funds are appropriated by the annual foreign operations appropriations act; and

(ii) The value of the contract or sub-contract is \$500 or more;

(2) Does not apply to the acquisition of services;

(3) Generally is implemented through letters of offer and acceptance, other country-to-country agreements, or Federal interagency agreements; and

(4) Requires reporting of noncompliance for effective implementation.

[70 FR 57192, Sept. 30, 2005]

229.170-3 Reports.

The contracting officer shall submit a report to the designated Security Assistance Office when a foreign government or entity imposes tax or customs duties on commodities acquired under contracts or subcontracts meeting the criteria of 229.170-2(b)(1). Follow the procedures at PGI 229.170-3 for submission of reports.

[70 FR 57192, Sept. 30, 2005]

229.170-4 Contract clause.

Use the clause at 252.229-7011, Reporting of Foreign Taxes—U.S. Assistance Programs, in solicitations and contracts funded with U.S. assistance appropriations provided in the annual foreign operations appropriations act.

[70 FR 57192, Sept. 30, 2005]

Subpart 229.4—Contract Clauses

SOURCE: 62 FR 34125, June 24, 1997, unless otherwise noted.

229.402 Foreign contracts.

229.402-1 Foreign fixed-price contracts.

Use the clause at 252.229-7000, Invoices Exclusive of Taxes or Duties, in solicitations and contracts when a fixed-price contract will be awarded to a foreign concern.

229.402-70 Additional clauses.

(a) Use the clause at 252.229-7001, Tax Relief, in solicitations and contracts when a contract will be awarded to a foreign concern in a foreign country. When contract performance will be in Germany, use the clause with its Alternate I.

(b) Use the clause at 252.229-7002, Customs Exemptions (Germany), in solicitations and contracts requiring the import of U.S. manufactured products into Germany.

(c) Use the clause at 252.229-7003, Tax Exemptions (Italy), in solicitations and contracts when contract performance will be in Italy.

(d) Use the clause at 252.229-7004, Status of Contractor as a Direct Contractor (Spain), in solicitations and contracts requiring the import into